

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BRUCE KEITHLY, DONOVAN LEE, and )  
EDITH ANNA CRAMER, Individually and on )  
Behalf of all Others Similarly Situated, )

No. C09-1485RSL

Plaintiff, )

**CLASS ACTION AMENDED  
COMPLAINT FOR VIOLATIONS OF  
THE WASHINGTON CONSUMER  
PROTECTION ACT AND FOR  
DECLARATORY RELIEF**

v. )

INTELIUS, INC., A Delaware Corporation; and )  
INTELIUS SALES, LLC, A Nevada Limited )  
Liability Company, )

**JURY TRIAL DEMAND**

Defendant. )

**I. NATURE OF ACTION**

Plaintiffs Bruce Keithly, Donovan Lee, and Edith Anna Cramer, individually and on behalf of a class of similarly situated parties, complain and allege the following:

1. Intelius, Inc. and its wholly-owned subsidiary/affiliate, Intelius Sales LLC, (collectively, Intelius, Inc. and Intelius Sales LLC are referred to as “Intelius”) market products and services on the Internet. Among the services Intelius offers on the Internet are “reverse” cell phone and land-line directories, “people search” directories and “background check” information. When class members sign up for such services, they provide their credit/debit card information. Through Intelius’ misleading “in-cart marketing” and “post-transaction marketing” efforts on its website, when the consumer purchases an Intelius product, the consumer also unknowingly enrolls in a subscription-based service with Intelius

1 or Adaptive Marketing, LLC. The details and/or benefits of those subscription services  
2 generally are never made known to the consumer, yet the consumer is then later billed a  
3 significant monthly fee -- often \$19.95/month -- in perpetuity.

4 2. The situation described above is a result of a July 10, 2007 marketing  
5 agreement (the "Marketing Agreement") between Intelius Sales, LLC and Adaptive Marketing  
6 that provides for Intelius to transmit to Adaptive all the credit card and customer information it  
7 receives from selling Intelius products. For its part, Adaptive pays Intelius -- an undisclosed  
8 fee for each customer. In this way, Adaptive is able to foist unwanted services (and the related  
9 monthly charges) on unsuspecting consumers without full or adequate disclosure. Upon  
10 information and belief, this alliance between Intelius and Adaptive has caused consumers to  
11 unknowingly pay Adaptive (and thus, indirectly, Intelius) millions of dollars in non-existent  
12 and/or unwanted services.

13 3. Plaintiffs, on behalf of themselves and all others similarly situated, bring claims  
14 against Defendants based on Defendants' practice of collecting money from consumers  
15 through the deceptive practice involving the promotion and delivery of unordered  
16 subscriptions by Intelius and Adaptive. Defendants' conduct constitutes a violation of the  
17 Washington Consumer Protection Act.

## 18 II. JURISDICTION AND VENUE

19 4. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332.  
20 In the aggregate, the claims of Plaintiffs and the members of the Class exceed the  
21 jurisdictional minimum amount in controversy of \$5,000,000.00, exclusive of costs and  
22 interests, 28 U.S.C. § 1332(d)(2)(A) and § 1332(6). Additionally, this is a class action in  
23 which some of the members of the Class are citizens of a different state than the Defendants.

24 5. This Court has jurisdiction over Defendants because Intelius, Inc. maintains its  
25 principal headquarters in Washington. Both Defendants conduct business in Washington, and  
26 otherwise intentionally avail themselves of the markets within Washington, through

1 promotion, marketing and sale of their products in Washington, rendering the exercise of  
2 jurisdiction by this Court appropriate.

3 6. Venue is proper in this District of Washington pursuant to 28 U.S.C. § 1391  
4 because Defendants are domiciled in this District and/or because they provide services to  
5 Class members located in this District, conduct substantial business in this District, or  
6 otherwise have sufficient contacts with this District to justify them being fairly brought into  
7 court in this District.

### 8 **III. PARTIES**

#### 9 **A. Plaintiffs**

10 7. Plaintiff Bruce Keithly is a resident of Washington state. In April 2009 Mr.  
11 Keithly believed he purchased a background report search from Intelius for \$39.95 using a  
12 credit card. Unbeknownst to him, at the time he purchased the Intelius report, Mr. Keithly  
13 incurred a \$19.95 charge for an "Identity Protect" service that he did not knowingly order.  
14 When Mr. Keithly read his credit card statement he learned that he had been billed \$39.95 for  
15 the service he thought he had ordered, but he also discovered a \$19.95 charge noted only as  
16 "Intelius Subscription." This \$19.95 charge was for the "Identity Protect" service. Even after  
17 calling to cancel the "Identity Protect" service -- and the Company refused to give him a  
18 refund -- he was charged another \$19.95 for this "service."

19 8. Plaintiffs Donovan Lee and Edith Anna Cramer (collectively referred to as  
20 "Lee/Cramer") are domestic partners and residents of Ohio. In June 2008, Plaintiffs  
21 Lee/Cramer paid for a search report from Intelius using a credit card. Unbeknownst to them,  
22 at the time they purchased the Intelius report, Plaintiffs Lee/Cramer incurred monthly charges  
23 for unordered services. The services -- which were each billed to the Plaintiffs' credit card at  
24 \$19.95 per month -- appeared on the credit card statements as "Family Protect," "AP9\*Family  
25 Safety Repo-V" and "Intelius Subscription." As a result, Plaintiffs Lee/Cramer were  
26

wrongfully charged hundreds of dollars for a service that they did not knowingly order and which provided them no benefits.

## **B. Defendants**

9. Defendant Intelius, Inc. is a Delaware Corporation with its principal place of business at 500 108<sup>th</sup> Avenue, NE, 25<sup>th</sup> Floor, Bellevue, WA 98004. Intelius provides intelligence services to consumers over the Internet. At all times relevant to this complaint, Intelius controlled Intelius Sales, LLC on a day-to-day basis. Upon information and belief, Intelius, Inc. owns and operates the Intelius.com website and receives a substantial portion of the monies obtained by Intelius Sales from Adaptive as the result of the Marketing Agreement described above.

10. Defendant Intelius Sales, LLC ("Intelius Sales") is a Nevada limited liability company with its principal place of business at 500 108<sup>th</sup> Avenue, NE, 25<sup>th</sup> Floor, Bellevue, WA 98004. Intelius Sales is a wholly-owned subsidiary/affiliate of Intelius, Inc. and was party to the Marketing Agreement with Adaptive Marketing described above.

## **IV. SUBSTANTIVE ALLEGATIONS**

### **A. Intelius Improperly Enrolls Class Members for Monthly "Subscriptions," Netting Defendants Millions of Dollars**

11. Describing itself as an "information commerce company," Intelius provides on-line intelligence services and search and marketing services to consumers and enterprises. Among other things, Intelius generates revenue from consumers who purchase its intelligence services on a pay-per-use basis.

12. Among other products, Intelius offers such services as "reverse" cell phone directories, identity protection services and "background checks." Intelius sells its services through its network of websites, which Intelius claims was one of the top 100 most visited web properties in the U.S. for April 2008. According to Intelius, it has established relationships with leading online portals and directories, including Idea, Microsoft, Yahoo! and YELLOWPAGES.COM, that market its services on their websites and direct visitors to

1 Intelius websites. According to Intelius, since its inception in January 2003, it has processed  
2 more than 16 million orders and over four million customer accounts have purchased its  
3 services.

4 13. When a consumer purchases an Intelius service, Intelius makes available an  
5 “Intelius Consumer Site Terms and Conditions” page which purportedly governs the use of the  
6 Intelius databases. According to the terms and conditions, the Agreement is governed by  
7 Washington law.

8 14. Although Intelius derives revenue by directly offering services to customers, it  
9 also derives substantial revenue from “in-cart marketing” and “post-transaction marketing.”

10 15. “In-cart marketing” and “post-transaction marketing” have several deceptive  
11 features in common, including (1) an offer made after the customer has selected the product(s)  
12 he wants; (2) confusing incentives; (3) disclosures minimized on the screen and buried in the  
13 middle of the transaction and not repeated at the end of or in confirmatory emails; (4) negative  
14 pricing and/or free-to-pay conversion features; and (5) billing done in amounts and under  
15 names that make detection less likely.

16 16. “In-cart marketing” is a process by which Intelius offers other services to  
17 customers, when offering a discount on the purchase price of the previous selected Intelius  
18 product, and without an explanation until later webpages that the additional service is “free”  
19 only for a set period of time. The consumer’s credit or debit card is then later billed, often 7  
20 days later, if the consumer does not actively cancel the service, and is billed thereafter on a  
21 monthly basis. This is called “free-to-pay” conversion feature.

22 17. “Post-market marketing” is the process by which Intelius offers at least one  
23 third party, Adaptive Marketing (“Adaptive”), the opportunity to use Intelius’ website for  
24 purchase after the consumer has completed his or her transaction of purchasing an Intelius  
25 product. Adaptive offers a variety of membership programs (the “Adaptive Programs”) on the  
26

1 Internet. Among the Adaptive Programs are: “24 Protect Plus,” “Privacy Matters,”  
2 “ValueMax,” and “Family Safety.”

3 18. Pursuant to the July 10, 2007 Marketing Agreement, when Plaintiffs and any  
4 member of the Class pay for one of the Intelius services, Intelius then transfers the consumers’  
5 credit/debit card and other billing information to Adaptive. Plaintiffs and Class members are  
6 then surreptitiously enrolled in one or more of the Adaptive programs, and are billed for these  
7 unwanted services on a monthly basis.

8 19. While Adaptive may be a separate entity purportedly providing these services  
9 to consumers, the consumers end up with these unwanted services through the direct actions of  
10 Intelius via the Intelius websites, and the language on the Intelius website has the tendency to  
11 mislead customers into unknowingly signing up for these Adaptive Programs. As explained in  
12 a March 2009 “Seattle Weekly” article:

13 [M]any users apparently failed to realize they are giving such consent, and it’s  
14 easy to see why. Say you do a “people search” through Intelius, a service that  
15 costs \$1.95 and provides an individual’s phone numbers, addresses, birthday,  
16 relatives, and other information. After you enter your credit-card number, a page  
17 comes up thanking you for your order in big, bold type. In somewhat smaller and  
less-bold type, it also says you can get \$10 back as a member of ValueMax (an  
Adaptive program offering discounts at stores like Kmart and Bed Bath &  
Beyond). In really small, regular type, it tells you that membership will entail  
your credit card being charged \$19.95 a month after a “7-day FREE trial period.”

18 Remember, you still haven’t gotten access to the information you paid for. To get  
19 it, you have two choices: Click on the big orange rectangle, off to the side of all  
20 these instructions that says “YES, and show my report,” or click on the small  
black one-line link that says “No, show my report.” The YES button is what gets  
you monthly ValueMax fees.

21 20. A May 2008 “TechCrunch” article describes an equally deceptive manner by  
22 which Intelius causes consumers to unknowingly “order” Adaptive products:

23 Every time a customer buys a product at Intelius, they are shown a page telling  
24 them “Take our 2008 consumer Credit Survey and claim \$10.00 CASH BACK  
with Privacy Matters Identity.” The user is then shown two survey questions and  
25 asked to enter their email and click a large orange button. They can choose to  
skip the survey by clicking on a small link at the bottom of the page.

26 Undoubtedly a lot of consumers do the survey and move forward to the next page  
-- it only takes a second. But what most people don’t do is read the fine print,

1 which gives no real details on the \$10 cash back (in fact, it is never mentioned  
2 again, anywhere). Instead, in light gray small text, users are told that by taking  
3 the survey they are really signing up to a \$20/month subscription. Intelius  
4 forwards your personal information, including your credit card, to Adaptive  
5 marketing. The next day a \$20 charge appears on your credit card, and each  
6 month afterwards.

7 \* \* \*

8 Of course you never hear from Adaptive Marketing again (why take a chance that  
9 you'll wonder who they are). Instead, the credit card charges keep coming, and  
10 the company obviously hopes you never notice.

11 This survey is quite literally a complete and total scam. And since users continue  
12 to pay forever (or until they try to stop it), the contribution to Intelius' revenue  
13 grows significantly over time.

14 21. Defendants' process of "post-transaction marketing" of the Negative Option  
15 Programs uniformly proceed as follows:

16 (a) Consumers select from a menu of Requested Information from Intelius.com and  
17 add them to their online shopping cart;

18 (b) Customers enter their credit/debit card and billing information on an order  
19 confirmation page and purchase the Requested Information by clicking a button that states  
20 "Complete the Purchase and Show My Report.";

21 (c) Before the Intelius.com website provides customers their report containing the  
22 Requested Information, the Intelius.com website takes them to an "interstitial" page—a web  
23 page that is displayed before or after an expected content page—containing the post-transaction  
24 upsell marketing for the Negative Option Programs. The interstitial page for the Programs  
25 requires customers of www.intelius.com to affirmatively decline the Negative Option Program  
26 offer in order to avoid being enrolled and charged, and to confirm their prior purchase of the  
Requested Information;

(d) If the consumer enters their email address and clicks a large, prominent red button  
on the interstitial page stating: "YES, And show my report" (the "Confirmation Button"), they  
are taken to another page containing their Requested Information. Defendants do not further

1 mention the Negative Option Program(s) on the Intelius.com website, or provide any kind of  
2 confirmation of the purported enrollment or transcription receipt.

3 22. Defendants' interstitial page for the Negative Option Programs uses the following  
4 (non-exhaustive) tactics, which, taken together or separately, make the page likely to deceive a  
5 reasonable consumer;

6 (a) Prominently featuring, and highlighting certain language on the interstitial page in  
7 large font size, and color highlights, including (1) "Thank You your order has been successfully  
8 completed" above "\$10.00 CASH BACK," or (2) "FREE CREDIT REPORT" above "Please  
9 type in your email address below" above a large button stating "YES, And show my report."  
10 These highlighted statements distract attention away from any purported disclosures concerning  
11 the Negative Option Programs;

12 (b) Using a confirmation button that misleadingly states "YES, And show my report"  
13 instead of the button Intelius uses for the Requested Information order confirmation page:  
14 "Complete the Purchase and Show My Report" that creates the impression that the interstitial  
15 page is part of consumers' prior purchase of the Requested Information;

16 (c) Failing to format the "No, show my report" link on the interstitial page to appear  
17 as a button or the appearance of an internet link, and using small grey lettering that blends in  
18 with the page background;

19 (d) Obfuscating any purported disclosures in gray lettering no larger than  
20 approximately half the size of other highlighted information;

21 (e) Burying key language concerning the cost, charge to the credit/debit card used to  
22 purchase Requested Information, the "free-to-pay" conversion feature, and phone number to  
23 cancel the Negative Option Program below unrelated text, in the middle of a block paragraph  
24 with extremely low readability scores that require high levels of sophistication and/or education  
25 to understand;



1 (f) Using “preacquired account information” and the entry of an email address as a  
 2 proxy for re-entering payment information to confirm acceptance of the Programs; and

3 (g) Offering the Programs on a “free-to-pay” basis.

4 23. On information and belief, and as alleged in another action against Intelius,  
 5 Intelius hires psychologists and behavioral specialists to carefully design the interstitial page to  
 6 hit human psychological cues and obfuscate any purported disclosures, in an effort to cause  
 7 Plaintiff and the Class to inadvertently enroll in the Negative Opinion Programs. Testimony  
 8 before the U.S. Senate similarly discusses how websites such as Intelius’ architecture “is  
 9 effective in achieving deception by exploiting a series of well-known psychological biases that  
 10 impede consumers’ abilities to make fully informed choices in online and offline settings.”<sup>1</sup>

11 24. The language contained on the Intelius websites has the capacity to deceive a  
 12 substantial portion of the public to initially purchase Adaptive products. Moreover, pursuant to  
 13 the terms of the Marketing Agreement, Intelius makes it difficult for the reasonable consumer to  
 14 inquire about or cancel the Adaptive Program even when the consumer discovers that he/she is  
 15 being charged for the Adaptive Program. For example, the Marketing Agreement specially  
 16 prohibits Intelius from communicating with any customer with respect to an Adaptive Program,  
 17 without Adaptive’s prior written consent. Moreover, the Adaptive Programs are sometimes also  
 18 listed on the consumer’s charge card bill as an “Intelius Subscription” or “Intelius.com” charge,  
 19 thereby further obfuscating what the charge constitutes.

20 25. Intelius thus enrolls Plaintiffs and the Class members into Adaptive Programs  
 21 without adequately disclosing, among other things: (1) that the consumers are being enrolled in  
 22 the Adaptive Programs without their authorization or consent; (2) the amount of the recurring  
 23 charges by Adaptive and/or Intelius; (3) the terms and conditions involved in the Adaptive  
 24 Programs; and (4) the manner by which the consumer may cancel those services.

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 26 

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<sup>1</sup> See Statement of Robert Meyer, presented to the United States Senate Committee on Commerce and  
 Transportation, November 17, 2009.

26. The fact that Intelius website marketing of Adaptive Programs is plainly deceptive to a substantial portion of the public is borne out in, among other things, the hundreds - if not thousands -- of complaints received by the Washington State Attorney General office and the Better Business Bureau. The Washington State AG is actively investigating Intelius for the unfair and deceptive practices alleged herein.

27. The Intelius site is so deceptive, that even "sophisticated" consumers are being misled. As reported in the "Seattle Weekly" article:

Stephen Kropp of Renton says he inadvertently signed up for an Intelius identity-theft subscription last summer after purchasing a phone number from the company. Sometime later, he says, he noticed a \$19.95 charge on his debit card. Looking through past statements, he realized the company had been charging him for six months, collecting a total of \$120. "I just wanted a phone number," says Kropp. "The service they were offering was completely unrelated to what I was asking for" and hadn't provided him any benefits that he could see. He says Intelius initially refused to refund all but one month of the fees, but agreed to return the rest after he wrote to [the Attorney General's] office.

Like many of those complaining, Kropp is not a computer neophyte. A civil engineer, he works for an environmental consulting firm called Entrix, where he designs salmon habitat restoration projects, among other things -- all using software, of course. "I'm pretty much a computer nerd," he says.

That's the thing that bothers Brenda Piampiano, a Maine attorney who was hit with \$40 worth of charges for an Adaptive service she says she never intentionally signed up for. The service is called "Family Safety," and promises to allow consumers the ability to monitor sex offenders in their neighborhoods. "I'm a relatively savvy person with a law degree, and I use the computer absolutely all the time," she says. "I feel like if I can get taken into these things, anybody can."

28. Intelius derives substantial revenue as the result of its deceptive sale of Adaptive Programs. According to its SEC data, by the end of first quarter 2008, 38.9% of Intelius' revenue was the result of its agreement with Adaptive.

29. Intelius' October 19, 2009 Form S-1 filed with the SEC (the "Form S-1"), states that:

Sales of ... post-transaction advertising of other subscription services, appear to be the focus of many customer complaints, and our efforts to reduce the incidence of complaints may also reduce our revenues from ... our advertising.

\* \* \*

1 [W]e are currently on probation with one of our payment card associations as a  
2 result of elevated levels of chargebacks.

3 \* \*

4 The office of the Washington State Attorney General has started a formal inquiry,  
5 including depositions of some of our executives, about some of our business  
6 practices, particularly those involving our business relationship with Adaptive  
7 Marketing and associated with our sales of subscription services.

8 30. Defendants recognize that the misleading manner in which the Negative Option  
9 Programs are disclosed, and by which customers are enrolled therein is the primary reason for  
10 the revenue resulting from these Negative Option Programs. Intelius' Form S-1 states that: "if  
11 the manner in which [Adaptive] advertises its services on our websites is changed so that fewer  
12 customers accept the offers, our financial results could be harmed."

13 **B. CONGRESSIONAL TESTIMONY AND FINDINGS SUPPORTS THE**  
14 **DECEPTIVENESS OF INTELIOUS' POST-TRANSACTION MARKETING**

15 31. On November 16, 2009, the Senate Committee on Commerce, Science and  
16 Transportation, Office of Oversight and Investigations issued a Staff Report for Chairman John  
17 D. Rockefeller on post transaction marketing titled Aggressive Sales Tactics on the Internet and  
18 Their Impact on American Consumers (the "Rockefeller Report" by the "Senate Committee").  
19 The Rockefeller Report was followed by a hearing on the matter before the entire Senate  
20 Committee. The Rockefeller Report focused on, *inter alia*, Adaptive and its parent company,  
21 Vertrue, Inc., and concluded that "It is clear at this point that [Adaptive] use[s] highly aggressive  
22 sales tactics to charge millions of American consumers for services the consumers do not want  
23 and do not understand they have purchased."

24 32. On November 17, 2009, Robert Meyer, a professor of marketing at the Wharton  
25 School testified before the United States Senate Committee on Commerce and Transportation.  
26 Professor Meyer specifically targeted the Intelius website as an example of deceptive post-  
transaction sales tactics, attaching Intelius' webpages and highlighting step by step how Intelius  
deceives its customers.

33. Also on November 17, 2009, Robert McKenna, the Washington State Attorney General submitted testimony about the state's investigation into certain Internet companies. The Washington State AG's office is currently conducting an investigation of Intelius, and has conducted depositions of Intelius executives. Mr. McKenna, describing Intelius' website, testified in a prepared statement that:

After a consumer places an order for a product or service and enters his or her payment information on an ecommerce site, an offer for \$10 cash back for filling out a survey appears on the screen. The impression left on the consumer by the Web page is that he or she should fill in the survey, enter his or her email address (sometimes twice) and click on the button to complete his or her purchase and claim the \$10 cash back. In fact, by clicking on the button, the consumer is purportedly agreeing to be enrolled in a free trial for a membership program that will be charged automatically on a recurring monthly (or, in some cases, annual) basis to the account the consumer used to make the purchase of the product or service. The fine print on the Web page discloses that by clicking on the button associated with completing the purchase or submitting the survey, the consumer is purportedly authorizing the e-commerce site to transmit the consumer's financial account information to an undisclosed third party. Despite the disclosures, the offer misleads consumers into believing that the offer is for \$10 cash back for taking a survey, not an offer for a trial in a membership program, which is the "true" offer and is disclosed only in the fine print. In general, the offers appear to be coming from the e-commerce site and do not disclose the third party that is actually making the offer.

The Washington Attorney General's Office has been able to identify several hundred consumer complaints filed with our office in the last two years alone that involve the consumer having been enrolled in a membership program without his or her knowledge and having been automatically billed for the program without his or her authorization.

Based upon these complaints and extensive investigations, we have observed a number of significant problems with this form of marketing, including:

1. Consumers do not expect that the financial account information that they provide for one transaction will result in ongoing charges placed by a third-party company;
2. Consumers have difficulty identifying and contacting the seller of the membership program to cancel or otherwise terminate any ongoing or recurring obligation because the sellers frequently do not identify themselves in the offers;
3. Sellers use a variety of distractions to obscure the "true" offer, e.g., offering cash back on the consumer's primary purchase and using "consumer surveys"; and

1 4. The use of words “free” or “trial offer” to market free-to-pay conversions leads  
 2 consumers to believe that they do not have to take further action in order to avoid  
 ongoing charges.

3 34. The Senate Committee in a 35-page investigative report, “Aggressive Sales  
 4 Tactics on the Internet and Their Impact on American Consumers” outlines the process by which  
 5 aggressive online sales tactics, such as those used by Intelius, dupes consumers. The Staff  
 6 Report states that Intelius has received over \$10 million in income from post-transaction  
 7 marketing.

## 8 **V. CLASS ACTION ALLEGATIONS**

9 35. Plaintiffs and the Class reallege the proceeding paragraphs as if fully set forth  
 10 herein.

11 36. This class action is brought and may be maintained under Fed. R. Civ. P. 23  
 12 (b)(2) and (b)(3). Plaintiffs bring this action on behalf of the following nationwide class:

13 All persons located within the United States who provided credit, or debit card  
 14 information to an Intelius website from July 17, 2007 to the present and thereafter  
 15 had charges debited to such card by or for the benefit of Intelius and/or Adaptive  
 Marketing LLC without the consumers’ prior informed authorization or consent.

16 37. Plaintiffs reserve the right to modify the class definition before moving for class  
 17 certification, including a reservation of the right to seek to certify subclasses, if discovery reveals  
 18 that modifying the class definition or seeking subclasses would be appropriate.

19 38. Excluded from the Class are governmental entities, Defendants, Defendants’  
 20 affiliates, agents, parents, subsidiaries, employees, officers, directors, and immediate family  
 21 members. Also excluded from the Class is any judge, justice or judicial officer presiding over  
 22 this matter and the members of their immediate families and judicial staff.

23 39. Plaintiffs do not know the exact number of Class members, because such  
 24 information is within the exclusive control of Defendants. Intelius boasts that it has sold to over  
 25 four million customer accounts. The members of the Class include Washington residents and are  
 26 so numerous and geographically dispersed across the United States that joinder of all Class  
 members is impracticable.

1           40. Defendants have acted with respect to the Class in a manner generally applicable  
2 to each Class member. There is a well-defined community of interest in the questions of law and  
3 fact involved in the action, which affect all Class members. The questions of law or fact  
4 common to the Class predominate over any questions affecting only individual members and  
5 include, but are not limited to, the following:

6           A. Whether Defendants misstated, omitted or concealed material facts concerning the  
7 Adaptive Programs, and whether such misstatements, omissions or concealment of material facts  
8 deceived, or are likely to mislead and deceive consumers using Intelius websites;

9           B. Whether Defendants' acts and omissions as described above constitute a violation  
10 of the Washington Consumer Protection Act (the "CPA");

11           C. Whether Plaintiffs and the members of the Class have been damaged by  
12 Defendants' wrongs complained of herein, and if so, whether Plaintiffs and the Class are entitled  
13 to injunctive relief;

14           D. Whether Plaintiffs and the members of the Class have been damaged by  
15 Defendants' wrongs complained of herein, and if so, the measure of those damages and the  
16 nature and extent of other relief that should be afforded;

17           E. Whether treble damages should be awarded to Plaintiffs and the members of the  
18 Class for Defendants' violations of the Washington CPA, as alleged herein;

19           F. Whether Plaintiffs and the members of the Class should be awarded attorneys'  
20 fees and the costs of suit for Defendants' violation of the Washington CPA, as alleged herein;  
21 and

22           G. Whether Plaintiffs and the members of the Class are entitled to declaratory relief  
23 for Defendants' statutory violations alleged herein.  
24  
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1           41. Plaintiffs' claims are typical of the claims of the other members of the Class in  
2 that all members of the Class have been harmed in substantially the same way by Defendants'  
3 acts and omissions.

4           42. Plaintiffs are each an adequate representative of the Class. Plaintiffs are  
5 committed to prosecuting this action and have retained competent counsel experienced in  
6 litigation of this nature. Plaintiffs seek no relief that is antagonistic or adverse to other members  
7 of the Class.

8           43. A class action is superior to other available methods for the fair and efficient  
9 adjudication of the controversy. The prosecution of separate actions by individual members of  
10 the Class would create the risk of inconsistent or varying adjudications with respect to individual  
11 members of the Class. Moreover, litigation on an individual basis could be dispositive of the  
12 interests of absent Intelius customers, and substantially impair or impede their ability to protect  
13 their interests.

14           44. In view of the complexity of the issues presented and the expense that an  
15 individual Plaintiff would incur if he or she attempted to obtain relief from Intelius, the  
16 individual claims of Class members are monetarily insufficient to support separate actions.  
17 Because of the size of the individual Class members' claims, few, if any, Class members could  
18 afford to seek legal redress for the wrongs complained of in this Complaint.

19           45. Plaintiffs do not anticipate any difficulty in managing this action as a class action.  
20 The identities of the Class members are known by Defendants, and the measure of monetary  
21 damages can be calculated from Defendants' records. The claims will be governed under  
22 Washington law in accordance with Intelius's Terms and Conditions. This action poses no  
23 unusual difficulties that would impede its management by the Court as a class action.

**VI. CLAIMS FOR RELIEF**

**A. FIRST CAUSE OF ACTION**

**1. Violation of Chapter 19.86 RCW, Washington Consumer Protection Act (Against All Defendants)**

46. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth herein.

47. This cause of action is asserted on behalf of Plaintiffs and the Class.

48. The Washington Consumer Protection Act, RCW 19.86 *et seq.*, provides consumers with a comprehensive procedure for redressing Defendants' unfair or deceptive business practices.

49. RCW 19.86.090 provides a private right of action to any person injured in his property by an "unfair or deceptive act or practice."

50. Defendants' acts and omissions as alleged herein violate the Washington CPA because they: (1) are unfair or deceptive acts or practices; (2) are committed in the course of Defendants' business; (3) have a pervasive public interest impact and have the potential to deceive a substantial portion of the public; and (4) have caused injury to Plaintiffs in their business and/or property and the members of the Class.

51. As a result of Defendants' deceptive acts and practices as alleged herein. Plaintiffs and the members of the Class paid for unwanted and unused services. Defendants' actions and inactions as alleged herein are the proximate cause of injury to Plaintiffs and the Class in an amount to be proven at trial.

52. Pursuant to RCW 19.86.090, Plaintiffs seek damages on behalf of themselves and each Class member against all Defendants for Plaintiffs' actual damages sustained as a result of Defendants' actions and inactions alleged herein, in an amount to be determined at trial, but not less than \$5,000,000, as well as the costs of this suit and reasonable attorneys' fees.



53. Further, pursuant to RCW 19.86.090, Plaintiffs seek treble damages on behalf of themselves and each Class member for their actual damages sustained as a result of Defendants' unfair and deceptive acts in the amount to be determined at trial, but not less than \$5,000,000.

**B. SECOND CAUSE OF ACTION**

**1. Declaratory Relief Under the Declaratory Judgments Act, 28 U.S.C. § 2201(Against All Defendants)**

54. Plaintiffs and the Class reallege the preceding paragraphs as if fully set forth herein.

55. Defendants' sign-up statements on the Intelius websites have a tendency to mislead and deceive members of the Class.

56. Plaintiffs are entitled to have this Court establish by declaration their rights and legal relations under the Washington CPA.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request for themselves and the members of the Class that the Court enter an order and judgment against Defendants as follows:

1. Allowing this action to be brought as a Class action pursuant to Fed. R. Civ. P. 23(b)(2) or 23(b)(3);

2. Adjudging and decreeing that Defendants have engaged in the conduct alleged herein;

3. Declaring that Defendants have violated the Washington CPA by their unfair and deceptive business acts or practices that have caused injury to Plaintiffs and the members of the Class;

4. Awarding Plaintiffs and the Class actual damages for Defendants' violations of the Washington CPA;

5. Awarding Plaintiffs and the Class treble damages under the Washington CPA;

6. Awarding Plaintiffs and the Class injunctive and declaratory relief against all Defendants for violation of the Washington CPA;

1           7.     Awarding Plaintiffs and the Class injunctive and declaratory relief against all  
2 Defendants to ensure that Defendants will not continue to market services with deceptive or  
3 materially misleading information;

4           8.     Awarding Plaintiffs and the Class injunctive and declaratory relief against all  
5 Defendants to ensure that Defendants will not continue to engage in unfair or deceptive  
6 business acts or practices;

7           9.     Awarding Plaintiffs and the Class restitution damages for Defendants' unfair  
8 and deceptive acts and practices in violation of the Washington CPA;

9           10.    Awarding Plaintiffs and the Class pre- and post-judgment interest at the highest  
10 allowable rate;

11          11.    Awarding Plaintiffs and the Class their costs and expenses;

12          12.    Awarding Attorneys' fees pursuant to the Washington CPA, the Common Fund  
13 Doctrine, as set forth by statute, or as otherwise allowed by law; and

14          13.    Granting such other and further relief as this Court may deem just and proper,  
15 and equitable.

16                                   **JURY TRIAL DEMANDED**

17          Plaintiffs hereby demand a trial by jury on all issues so triable.

18                 DATED this 10th day of May, 2010.

1  
2  
3 By /s/ Mark A. Griffin

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20 *Counsel for Plaintiffs Bruce Keithly, Donovan*  
21 *Lee and Edith Anna Cramer*  
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23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2010, I caused to be served a true and correct copy of the PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR (1) TEMPORARY STAY OF DISCOVERY AND (2) CONDITIONAL REQUEST FOR BIFURCATION OF DISCOVERY on the following recipients via the method indicated:

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*Attorneys for Intelius, Inc and  
Intelius Sales, LLC*

DATED this 10th day of May, 2010.

/s/ Mark A. Griffin  
Mark A. Griffin